

# EMPLOYMENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURES

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## I. Purpose; Differentiating Complaints from Reports that Are Not Also Complaints

These procedures will be used to process most complaints and other reports that any employee, former employee, or applicant for employment has been subjected to discrimination or retaliation in violation of any employment-related nondiscrimination law or any board policy that prohibits discrimination based on a legally-protected status in connection with the District's employment practices (including policy provisions prohibiting retaliation). However, in some situations (including in connection with formal complaints of sexual harassment under Title IX), applicable laws and District policies require District representatives to process such matters under other complaint/grievance procedures.

Within these procedures, a report made to an appropriate District official of conduct or of any District policy or practice that reasonably may constitute prohibited employment discrimination (or retaliation) will be treated as a "complaint" when an eligible person has made an oral or written request to an appropriate District official that objectively can be understood as a request for the District to investigate and make a determination about the alleged discrimination or retaliation. (Note: The District requires complaints that are initially presented orally to be subsequently documented in writing as a condition of starting a formal investigation and determination of the allegations under these complaint procedures.)

It is also permissible to submit a report that is not intended as a "complaint," but that is intended (1) to notify appropriate District officials of information about possible employment-related discrimination, (2) to seek assistance related to possible discrimination for one or more persons, and/or (3) to request that the District consider a particular change or other response to the concern. The District's expectation is that, upon receiving any such report, the District's designated nondiscrimination coordinators and other administrative officials will appropriately respond to the report, with the goals of preventing, identifying, and preventing the recurrence of any prohibited discrimination. Further, some provisions of Part II and Part III of these procedures expressly apply to such reports even when no complaint is pending.

Finally, these complaint resolution procedures may also be used in any situation where another Board policy or District procedure directs or allows the use of these procedures.

## II. General Provisions and Pre-Investigation Considerations/Procedures

### A. Nondiscrimination Coordinators

The District's designated nondiscrimination coordinators (also referred to as an equal opportunities coordinator) have primary responsibility for coordinating the processing of reports and complaints under these procedures. In fulfilling such responsibilities, a coordinator may consult as needed with other administrators/supervisors. With the approval of the District Administrator or Executive Director of Operations, a nondiscrimination coordinator may also consult with District legal counsel.

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Board Policy 413/513 identifies and provides contact information for each of the District's nondiscrimination and equal opportunities coordinators. The contact information for the coordinators is also available on the District's website.

## B. Procedures for Filing a Complaint or Report

Refer to Board Policy 413/513 and Board Policy 511 for procedures and additional information regarding the submission of reports and complaints of prohibited discrimination and retaliation. Under the Policy 413/513 procedures, it is initially sufficient to submit such a report or complaint to one of the District's designated nondiscrimination and equal opportunities coordinators in person, by U.S. mail, by telephone, or by electronic mail, using the contact information for the coordinator(s) that is identified in Policy 413/513.

## C. Employee Reporting; Internal Referrals to Nondiscrimination Coordinators

When a District employee has or receives information about conduct, including the implementation of a District policy or operating procedure, that reasonably may constitute unlawful discrimination (including prohibited retaliation), the employee is required to fulfill the reporting obligation set forth in District nondiscrimination policies and procedures. Generally, this involves providing the relevant information to an appropriate District-designated nondiscrimination coordinator who is not affected by a known conflict of interest in the matter. For example, employees are expected to provide information about possible sex discrimination to a nondiscrimination coordinator who serves as a District Title IX Coordinator.

If, for any reason, a complaint or other report alleging prohibited discrimination or retaliation is initially submitted to a District official, administrator, or supervisor other than a designated nondiscrimination coordinator, such other person is expected to promptly refer the complaint to an appropriate coordinator or, in the event of a potential conflict of interest or similar exceptional circumstance, to the District Administrator or Director of Human Resources. This internal referral expectation does not relieve a person who is initially submitting such a report or complaint from following the District's established report/complaint submission procedures.

## D. Coordination with Title IX Regulations and Procedures

When a complaint or other report of possible employment discrimination concerns conduct that reasonably may constitute "sexual harassment" as defined under Part 106 of Title 34 of the Code of Federal Regulations ("the federal Title IX regulations"), additional requirements and obligations apply to the District and its designated Title IX Coordinator(s). Examples include the obligation to consider and implement appropriate supportive measures under Title IX and the obligation to avoid implementing disciplinary sanctions against a person alleged to be responsible for sexual harassment prohibited by Title IX until after an appropriate determination of responsibility.

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Further, as required by the federal Title IX regulations, the District will use its separately-adopted Title IX "grievance process" to address "formal complaints" of "sexual harassment," as those terms are defined in the federal regulations (see [34 C.F.R. §106.30](#)). The District's Title IX grievance process is documented in 413/513-Rule 1, and it is available on the District's website.

Regarding the Title IX grievance process:

1. If a complaint or other report of possible sex-based **harassment** could have been pursued as a formal complaint of Title IX sexual harassment under the District's Title IX grievance process but the complaining party elects not to do so, then the District is not under any automatic obligation to process the report of sex-based harassment using the general nondiscrimination complaint procedures defined below. However, even if the District does not initiate the use of its Title IX grievance process or the general complaint procedures defined below, the District will still fulfill any applicable legal obligations to appropriately respond to the reported information.
2. The District is not required to use the general nondiscrimination complaint procedures defined below to further address any report, complaint, allegation, or basis for a finding of potential misconduct or liability that reaches a determination or that is otherwise resolved through the separate Title IX grievance process.

## E. Concerns with Safety, Confidentiality, or Retaliation

Any person who presents a complaint or other report or who participates in any manner in an investigation or other proceeding under these procedures should arrange to discuss any concerns about safety, the availability and maintenance of a non-discriminatory work environment, confidentiality, or retaliation with the District's Equal Employment Opportunity Coordinator (EEO Coordinator), the Director of Human Resources, or the District Administrator as early as possible in connection with their involvement in the process — including at or even prior to the time that a report or complaint is filed. The District's nondiscrimination policies further address the issues of confidentiality and protections for retaliation.

## F. Interim Measures

In conjunction with the District's receipt of notice of any complaint or other report of alleged discrimination, harassment, or retaliation, or any other matter that is directed to these procedures for a resolution, a District nondiscrimination coordinator or an administrator acting on behalf of a coordinator shall consider the potential need for and may implement interim measures that are taken before the resolution of the complaint or other report (e.g., safety planning, a "no contact" directive, or other steps needed to protect any person or to provide a nondiscriminatory work environment). Any person involved in such a matter may also affirmatively request the consideration of such interim measures.

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## G. Substitution of Parties

If a complaint or other report is initially submitted to the District by someone who is not claiming to have been personally harmed or victimized by the alleged conduct or challenged policy (such as a witness or a person who received a third-party account of an incident or allegation), the District reserves discretion, for purposes of these procedures and to the extent permitted by law, to substitute the actual party in interest in place of the person who initially submitted the complaint or report. The District will inform the person who initially submitted the complaint or report of any such decision to substitute the actual party in interest as the complainant.

## H. Authority to Dismiss Complaints or Specific Allegations

The District retains discretion to dismiss a complaint, or specific allegations, without completing the steps of these complaint procedures for any of the following reasons:

1. The allegations, in whole or in part, raise issues over which the District does not have authority or jurisdiction or that are not amenable to a resolution through these procedures;
2. Mootness (e.g., a challenged policy or practice has been changed);
3. The District determines that specific circumstances prevent the District from gathering evidence that is sufficient to reach a determination regarding the allegations;
4. Due to a lack of timeliness (e.g., an unreasonable or prejudicial delay in reporting);
5. Abuse of process; or
6. The complainant requests to withdraw the complaint and the District consents.

A decision to dismiss a complaint or any allegations for purpose of these complaint procedures does not prevent the District from otherwise addressing a matter through other processes.

An actual party in interest may, within 10 calendar days of being notified of a dismissal decision, submit a written request to the District Administrator asking for the District Administrator to review/reconsider such decision.

## I. Modification of Procedures to Address Conflicts

In all cases, these procedures shall be implemented in a manner that avoids conflicts of interest, including but not limited to situations where one of the individuals acting on behalf of the District in the resolution process is alleged to have engaged in the conduct that is the basis for the allegations. The primary means of avoiding conflicts is to substitute different individuals in place of any individual who has a conflict of interest. Provided that the District Administrator is not personally affected by a conflict of interest, all concerns with conflicts of interest or potential conflicts of interest shall be brought to the attention of the District Administrator, and the District Administrator is authorized to direct or approve such substitutions if he/she determines that it is necessary or appropriate to do

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If a report or complaint alleges that the District Administrator has engaged in the improper conduct that is the basis for the allegations, or if the District Administrator or School Board determines that the administrator is affected by some other material conflict of interest, a designated nondiscrimination coordinator or the District Administrator shall forward the complaint or report to the Board President. The Board President shall engage District legal counsel for the purpose of formulating a recommendation on any modifications to these procedures that may be appropriate to address the District Administrator's conflict of interest. Such recommendation may include the appointment of an outside investigator, and the Board President is authorized to appoint/engage such an outside investigator. When the District Administrator is affected by a conflict of interest, the Board President is also authorized to assign an individual to serve as the complaint manager for any formal investigation (see below) and to perform any other responsibility that these procedures assign to the District Administrator, including, upon advice of counsel and with notice to the Board, making decisions regarding the dismissal of a complaint. In addition, in any case where the District Administrator is alleged to have engaged in the conduct that is the basis for the allegations, the Board shall automatically serve as the body that, following an investigation, makes a determination regarding any allegations of misconduct on the part of the District Administrator. Any appeal of the Board's decision shall be treated as a request for reconsideration and final decision by the Board.

Beyond the modifications identified in this section, any additional modifications of these procedures that are deemed necessary or advisable in order to address conflicts of interest shall be approved by the Board.

### **III. Informal Resolution (other than for complaints or other reports of possible Title IX sexual harassment)**

#### **A. Conditions on the Use of Informal Resolution**

The District permits, but does not require, attempts to informally resolve complaints and other reports of information regarding (1) possible employment-related discrimination, harassment, or retaliation, or (2) other claims or allegations that are addressed under these procedures. However, both of the following conditions apply:

1. If any such complaint or other report relates to conduct that reasonably may constitute "sexual harassment" as defined by the federal Title IX regulations, any attempt at informal resolution will occur only if a formal Title IX harassment complaint has been filed and must be conducted pursuant to the Title IX regulations and the informal resolution procedures of the District's separate Title IX grievance process.
2. No person is required to participate in an informal resolution process (i.e., if such a process is offered, then participation is voluntary). A person who initially agrees to participate in an informal resolution process may withdraw from the process prior to its conclusion without penalty.

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## B. Description of the Process

1. An attempt to reach an acceptable informal resolution may be initiated at any point after the District has been notified of a report or a complaint that would otherwise be resolved using the formal investigative and decision-making steps defined below, including after a formal investigation has been initiated.
2. Although various administrators/supervisors may be involved in attempting an informal resolution, an appropriate nondiscrimination coordinator should still be notified of the complaint or report and involved in the decision to offer/pursue an informal resolution.
3. An informal resolution process is intended to be flexible, but generally includes any process that departs from the formal investigative and decision-making steps defined below. For example, an informal resolution may involve calling resolution meetings, gathering relevant information (e.g., regarding requested remedies), seeking agreement on facts that are not in dispute, holding mediated resolution sessions, and/or offering one or more options for changes to the relevant circumstances.
4. Attempts at informal resolution may resolve some, all, or none of the issues/allegations submitted for resolution. Any unresolved issues and allegations may proceed to be further processed under these procedures.
5. The person(s) facilitating the informal resolution process on behalf of the District shall document the allegations/issues that were submitted for attempted resolution and the outcome of the process. If such documentation is prepared by another person, the record shall be provided to the appropriate nondiscrimination coordinator.

## **IV. Formal Investigation and Determination Procedures for Employment Discrimination Complaints (other than for complaints of Title IX sexual harassment)**

The formal complaint procedures listed below shall be initiated based on a written statement of a complaint that documents the relevant claims/allegations. The written statement may be a statement that was submitted by a complainant (or a complainant's legally-authorized representative) or a statement that is prepared by a District-designated nondiscrimination coordinator or a designee (e.g., documenting a verbal complaint). If necessary, the written statement may be amended during the process, or the District may otherwise inform the parties of any clarifications of or changes to the claims or allegations under investigation. When processing a discrimination complaint, the District reserves discretion to concurrently investigate and reach determinations regarding reasonably related allegations of misconduct or policy violations.

The District will normally attempt to make an initial determination of a complaint under these procedures within 90 days of the date that a District-designated nondiscrimination coordinator, or an administrative-level designee of the coordinator, is first notified of the claims/allegations. However, the District may determine that there is a legitimate need to extend the normal timeline and shall notify the relevant parties of any such extension.

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**Step 1:** The District will designate a complaint manager, who will normally be one of the District's designated nondiscrimination coordinators. The complaint manager will be the primary point of contact regarding the complaint for the relevant parties, ensure that appropriate communications from the District are provided to the parties, and ensure appropriate record-keeping in connection with the complaint process.

**Step 2:** In consultation with the complaint manager, the District Administrator or the Director of Human Resources or their administrative-level designee shall assign one or more individuals to conduct an investigation of the claims/allegations and to make a determination of the merits of the matter at this Step.. The complaint manager shall ensure that the District provides the appropriate parties with written notice of the initial administrative determination of the complaint.

Depending on factors such as the authority of the person assigned to make the initial determination of the complaint, the specific nature of the allegations, and the application of confidentiality laws, a determination that any allegation of discrimination, retaliation, or other misconduct or violation has been substantiated (in whole or in part) may or may not identify specific remedies for the aggrieved party, disciplinary sanctions, or other consequences (or recommendations for such actions). For example, it may be necessary or appropriate in some cases for the determination to include the conclusion that a person responsible for substantiated discrimination or any other misconduct or violation shall be referred to appropriate District officials for follow-up decisions based on the determination.

**Step 3:** If any complainant or alleged responsible party under the complaint is dissatisfied with the determination reached at Step 2, the individual may, within 14 calendar days of the date that the District issues notice of the initial determination, file a written request for reconsideration with the office of the District Administrator. (The request may be submitted via electronic mail to the District Administrator's District-issued email address.) The request for reconsideration shall state the specific reason(s) why the party believes the administrative determination should be modified.

1. Prior to reaching a decision that would modify relevant findings of fact or the initial conclusions regarding responsibility for any discrimination, misconduct, or other violation, the District will give the other relevant parties to the matter at least 5 calendar days to submit a statement regarding the asserted grounds for the modification(s). To the extent remedies or sanctions were part of the initial determination and are the subject of a request for reconsideration, a similar opportunity for a party to submit such a statement shall be given regarding possible changes to remedies or sanctions that directly affect that party.
2. The District Administrator will normally issue a written decision on reconsideration to the parties within 30 calendar days unless further investigation is initiated and/or the District Administrator determines that an extension of time is otherwise needed. The District shall notify the parties of any extension of the 30-

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day timeline.

## V. External Agency or Court Filing

If a complainant is not satisfied with the District's decision, or in lieu of or in addition to utilizing the internal complaint procedures established by this procedure, the complainant may pursue alternate actions that may be available under state or federal law (e.g., filing an appeal to State Superintendent of Public Instruction in appropriate cases, or filing a complaint with the Equal Rights Division of the Department of Workforce Development, with the U.S. Department of Education's Office for Civil Rights - Region V, and/or with any court or agency having proper jurisdiction). Any party with a complaint is responsible for determining the applicable outside agencies or courts with which a complaint may properly be filed and the applicable filing deadlines and procedures. While it is not always necessary to pursue an internal complaint before filing a complaint with an external agency or court, the failure to follow an employer's internal procedures for giving notice of incidents and complaints can, in some cases, affect the individual's ability to seek remedies from an external agency or court. Unless mandated by a state or federal statute or regulation, pursuing an internal complaint under these procedures does not extend or delay the filing deadlines applicable to filing a complaint with an external agency or court.

## VI. Maintenance of Complaint Records

The District shall maintain records for each complaint or other report that is processed under these procedures. Such records shall normally identify at least the following:

1. The date the complaint or other report was first received by the District.
2. The identity of the person submitting the report or complaint and the identities of the actual parties in interest to any complaint, if known.
3. The claims or allegations made in the report or complaint and any other allegations that are presented or investigated in connection with the report or complaint.
4. Documentation of any interim measures implemented by the District under these procedures.
5. Documentation of the outcome of any informal resolution process that was attempted.
6. A record of the determination of a complaint, including any dismissals, any initial determination(s) on the merits, and any determination(s) made in connection with an appeal, including the identity of the relevant decision-makers.
7. Any remedies, sanctions, or other responsive actions that are granted/imposed/implemented following a determination that substantiates any claims or allegation(s).
8. Such other records as may be required by any applicable state or federal law.

Retention of the records and the retention of any personally-identifiable information within such records shall be governed by applicable laws and by applicable District records retention policies.

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**Cross References:** WASB PRG 511 Sample Rule 1

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